



July 31, 2000

Mr. Steven D. Monte
Assistant City Attorney
City Of Dallas
2014 Main Street, Room #501
Dallas, Texas 75201

OR2000-2880

Dear Mr. Monte:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137534.

The City of Dallas Police Department (the “department”) received a request for, among other information, “a copy of the Public Integrity Investigation” of a named individual. Except for an incident report and two memoranda that have been submitted for our review, we assume that you have released to the requestor all of the information that is responsive to the request.¹ As to the submitted documents, you assert that this information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

¹In your request to this office, you state that the city has withheld “portions of the requested documents” and that “[a]ll other information will be released.” We therefore assume that you have already released to the requestor all of the information that is responsive to the request, other than the specific documents you have submitted for our review. Thus, if you have not yet released all other information that is responsive to the request, you must do so at this time. Gov’t Code §§ 552.301, .302.

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation

on its face, how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In support of the applicability of section 552.108, you state only that "the file remains open and has yet to result in a conviction or deferred adjudication."

That statement refers to the above-cited language of subsections 552.108(a)(2) and (b)(2). However, we note that subsections 552.108(a)(2) and (b)(2), by their express language, apply only to information that *did not* result in conviction or deferred adjudication. We thus believe these provisions are not applicable to matters that have *not yet* reached a final result. Based on your representation that "the file remains open," we cannot assume that the matter at issue has reached a final result. We believe that in order for subsection 552.108(a)(2) or (b)(2) to be applicable, the information provided this office must demonstrate that the matter has concluded, and that the final result was neither conviction nor deferred adjudication. Therefore, you have not demonstrated the applicability of subsections 552.108(a)(2) and (b)(2) to the submitted documents.

You represent to this office that "the file remains open." This office has repeatedly stated that a presumption is created as to the applicability of subsections 552.108(a)(1) and (b)(1) if the *criminal* matter is pending. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978). This office thus applies the section 552.108 exception, pursuant to subsections 552.108(a)(1) and (b)(1), in those situations where it is demonstrated that the *criminal* matter is pending.

In the situation at hand, the information itself indicates on its face that the *criminal* investigation has concluded. The documents also indicate that the information of the concluded criminal investigation was forwarded to the Internal Affairs Division "for an administrative review." The information you have provided this office therefore indicates that it is the *administrative* investigation that "remains open." We note that the section 552.108 exception is inapplicable to a police department's internal administrative investigations that do not involve an investigation of crime. See *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App. - El Paso 1992, writ denied). Because the information you have submitted demonstrates that only an administrative investigation is pending and that the criminal investigation has concluded, you have not demonstrated the applicability of subsections 552.108(a)(1) or (b)(1) to the information.² Because you have also not shown

²The submitted information also indicates on its face that the matter was referred by the department to an assistant city attorney for possible prosecution. Where a criminal investigation has concluded but the prosecution remains active, we believe that subsections 552.108(a)(1) and (b)(1) can operate to except from disclosure the information pertaining to the concluded criminal investigation. However, you have not demonstrated in this instance that a related prosecution is pending. Although the submitted documents were

the applicability of subsections 552.108(a)(3) or (b)(3) to the information you seek to withhold, we conclude that the submitted documents are not excepted from required disclosure under section 552.108. As you have asserted no other exception for this information, we additionally conclude that the information you have submitted must be released to the requestor in its entirety.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

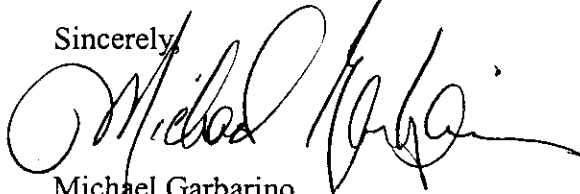
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

clearly forwarded for possible prosecution, the information itself does not indicate the status of the prosecution, if any. You make no representations in this regard. Thus, we have no indication of whether a related criminal prosecution is pending, has concluded, or did not occur.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino", written over a horizontal line.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/pr

Ref: ID# 137534

Encl. Submitted documents

cc: Mr. Harold Cornish
601 Nora Lane
De Soto, Texas 75115
(w/o enclosures)